

Federal Communications Commission

FCC 99-147

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC MAIL SECTION

JUN 25 3 57 PM '99

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 91-259
Table of Allotments,) RM-7309
FM Broadcast Stations.) RM-7942
(Canovanas, Culebra, Las Piedras,) RM-7943
Mayaguez, Quebradillas, San Juan,) RM-7944
and Vieques, Puerto Rico, and) RM-7948
Christiansted and Frederiksted,)
Virgin Islands))

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: June 17, 1999

Released: June 21, 1999

By the Commission:

1. The Commission has before it the Application for Review filed by Radio Station WKJB AM-FM, Inc. ("Radio WKJB") directed to the Memorandum Opinion and Order adopted by the Mass Media Bureau ("Bureau") in this proceeding, 11 FCC Rcd 16392 (Mass Media Bur. 1996).¹ Carlos J. Colon Ventura, Jose J. Arzuaga, Amor Radio Group, Corp., and V.I. Stereo Communications filed a Consolidated Opposition to the Application for Review. Radio WKJB filed a Reply to the Consolidated Opposition. For the reasons discussed below, we deny the Application for Review.

Background

2. At the joint request of Carlos J. Ventura ("Ventura"), licensee of Station WSAN, Channel 255B, Vieques, Puerto Rico, and Jose J. Arzuaga, licensee of Station WQQZ, Channel 252A, Quebradillas, Puerto Rico, the Notice of Proposed Rule Making and Order to Show Cause in this proceeding proposed the substitution of Channel 252A for Channel 255B at Vieques, the reallocation of Channel 252A from Vieques to Canovanas, Puerto Rico, and modification of the

¹On July 1, 1997, the Commission denied an Application for Review filed by Arso Radio Corporation directed to the Bureau's Memorandum Opinion and Order in this proceeding, 12 FCC Rcd 10055 (1997). We did not include the Radio WKJB Application for Review in our July 1997 decision. Radio WKJB and Arso Radio Corporation each filed a Petition for Reconsideration referring to this fact. In view of this action resolving the Radio WKJB Application for Review, we will dismiss both Petitions for Reconsideration.

Station WSAN license to specify operation on Channel 252A at Canovanas. 6 FCC Rcd 5310 (1991). In order to accommodate this substitution and reallocation, the Notice also proposed the substitution of Channel 258A for Channel 252A at Quebradillas, and modification of the Station WQQZ license to specify operation on Channel 258A. The Channel 252A substitution at Vieques and reallocation to Canovanas also required channel substitutions at Mayaguez and San Juan, Puerto Rico. Therefore, the staff included the Order to Show Cause directed to Radio WKJB, licensee of Station WKJB-FM, Channel 256B, Mayaguez, Puerto Rico, and Arso Radio, licensee of WPRM-FM, Channel 253B, San Juan, Puerto Rico. Specifically, Radio WKJB was directed to show cause why its Station WKJB-FM license should not be modified to specify operation on Channel 254B, and Arso Radio was directed to show cause why its Station WPRM-FM license should not be modified to specify operation on Channel 256B.

3. In response to the Notice, Ventura filed a counterproposal modifying its original proposal. Ventura proposed the same substitution of Channel 252A for Channel 255B at Vieques, but its reallocation to Las Piedras instead of Canovanas. In addition, the staff recognized that it had inadvertently failed to include an interrelated proposal by Amor Family Broadcasting Group to allot Channel 251A to Santa Isabel, Puerto Rico. For these reasons, the staff adopted a Further Notice of Proposed Rule Making requesting comment on the modified Ventura proposal and the Amor proposal to allot Channel 251A to Santa Isabel. 7 FCC Rcd 3324 (1992). Inasmuch as it was already necessary to issue a Further Notice, the staff included two proposals submitted earlier in response to the Notice. The first proposal was filed by V.I. Stereo Communications Corporation, licensee of Station WVIS, Channel 291B, Christiansted, St. Croix, Virgin Islands, requesting the reallocation of Channel 291B to Vieques, Puerto Rico. In order to accommodate this proposal, V. I. Stereo proposed the substitution of Channel 254A for vacant Channel 293A at Culebra, Puerto Rico. The second proposal was filed by Luis Hernandez requesting the allotment of Channel 253A to Frederiksted, Virgin Islands. This proposal required the deletion of Channel 253B at San Juan which had already been proposed in the Notice.²

4. The Report and Order substituted Channel 252A for Channel 255B at Vieques, reallocated Channel 252A to Las Piedras, and modified the Station WSAN license to specify operation on Channel 252A at Las Piedras. 10 FCC Rcd 6673 (1995). The Report and Order also substituted Channel 258A for Channel 252A at Quebradillas, and modified the license of Station WQQZ to specify operation on Channel 258A. As proposed in the Order to Show Cause, the Report and Order accommodated these actions by substituting channels and modifying licenses

²Ordinarily, we would not have accepted the V. I. Stereo and Hernandez proposals as counterproposals in this proceeding because they are not mutually exclusive with the proposals set forth in the Notice. In this instance, however, it was already necessary to issue a Further Notice which subjected the Ventura counterproposal to comment and the Amor Broadcasting proposal to comment and counterproposals. We concur with the view that it would not have been conducive to the efficient transaction of Commission business to dismiss these proposals and then issue a Notice of Proposed Rule Making instituting a new proceeding. Including the V.I. Stereo and Hernandez proposals in the Further Notice in this proceeding also subjected both of these two proposals to counterproposals and comment. This procedure afforded interested parties the same rights had we issued a separate Notice for a new proceeding. We believe that in this instance, this procedure resulted in an expedited resolution of the entire matter.

at Mayaguez and San Juan. Specifically, it substituted Channel 254B for Channel 256B at Mayaguez, and modified the license of Station WKJB-FM to specify operation on Channel 254B, and substituted Channel 256B for Channel 253B at San Juan, and modified the license of Station WPRM-FM to specify operation on Channel 256B. In addition, it allotted Channel 251A to Santa Isabel, and Channel 253A to Frederiksted. It also reallocated Channel 291B from Christiansted to Vieques and modified the license of Station WVIS to specify Vieques as the community of license. Arso Radio and Radio WKJB filed Petitions for Reconsideration directed to the Report and Order.

5. The Bureau staff denied both Petitions for Reconsideration.³ In doing so, the staff affirmed its earlier determination that new allotments to Las Piedras and Santa Isabel will result in a preferential arrangement of channels. In addition to noting the overall gain in the number of persons receiving service, the staff specifically determined that Las Piedras was entitled to a preference as a first local service notwithstanding its proximity to the San Juan, Caguas and Humacao Urbanized Areas.

6. In support of its Application for Review, Radio WKJB again argues that the reallocation to Las Piedras is a move-in from a rural area to a well-served Urbanized Area which is not in the public interest because it is counter to the "FM Migration Policy" and does not justify modification of the Station WKJB-FM license. In addition, Radio WKJB contends that Ventura "induced error" when he asserted earlier in this proceeding that Las Piedras was not located within any urbanized area. Finally, Radio WKJB argues that the staff did not consider the fact that the Las Piedras area already receives service from 23 stations.

Discussion

7. We deny the Application for Review, finding that the public interest will be served by the proposed Channel 252A channel substitution at Vieques, its reallocation to Las Piedras, and modification of the Station WSAN license to specify operation on Channel 252A at Las Piedras. We believe that this action results in a preferential arrangement of allotments as required by Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon granted in part, 5 FCC Rcd 7094 (1990) ("Community of License"). This determination is based upon the FM allotment priorities set forth in Revision of FM

³See 11 FCC Rcd 16392 (Mass Media Bur. 1996). In their Petitions for Reconsideration, Radio WKJB and Arso Radio had also contended that changing the proposed new community of license from Canovanas to Las Piedras required a new Order to Show Cause. In a second Order to Show Cause, 11 FCC Rcd 9871 (1996), the staff determined that a proposed new community of license represented a significantly different public interest benefit resulting from the proposed modifications of the licenses of Stations WKJB-FM and WPRM-FM. To this end, the second Order to Show Cause afforded Radio WKJB and Arso Radio an opportunity to respond to this new aspect of the Ventura proposal.

Assignment Policies and Procedures, 90 FCC 2d 88 (1982).⁴ Specifically, this will provide Las Piedras with a first local service and result in a net service gain to approximately 561,535 persons in Las Piedras and its surrounding area. We believe this to be a significant public interest benefit notwithstanding the fact that this area already receives service from 23 stations. In a related vein, we recognize that the removal of Station WSAN from Vieques will result in a service loss to 55,935 persons in an area of 192.4 square kilometers (74.2 miles). However, this entire loss area will continue to receive at least five full-time aural services, including Station WIVI, licensed to Vieques.⁵ We continue to believe that five remaining reception services is abundant service which is sufficient to ameliorate any concern expressed by Radio WKJB regarding a loss of a reception service. See Family Broadcasting Group, 53 RR2d 662, 669 (Rev. Bd. 1983), rev. denied, FCC 83-559 (Comm'n Nov. 29, 1983); See also LaGrange and Rollingwood, Texas, 10 FCC Rcd 3337 (1995). We concur with the Bureau's view that these public interest benefits justify modifying the respective licenses of Station WKJB-FM and Station WPRM-FM.

8. In affirming the staff action reallocating Station WSAN to Las Piedras, we realize that Las Piedras is located within the Humacao Urbanized Area. As noted by Radio WKJB in its Application for Review, we are concerned with the potential migration of stations from underserved rural areas to well-served urban areas. Community of License, 5 FCC Rcd at 7096. To this end, we will not uncritically apply a first local service preference of the FM allotment priorities when a station seeks to reallocate its channel from a rural area to a suburban community in a nearby Urbanized Area. In making such a determination regarding a proposal to award a first local preference to a community in an Urbanized Area, we apply existing precedents. See, e.g., Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General (KFRC), 5 FCC Rcd 3222 (1990); Fave and Richard Tuck, 3 FCC Rcd 5374 (1988). In essence, we consider the extent the station will provide service to the entire Urbanized Area, the relative populations of the suburban and central cities, and the independence of the suburban community. We believe the staff correctly applied each of these criterion to the facts of this proposal.

9. We believe that this proposal should be considered as a first local service to Las Piedras even though this allotment will provide a city-grade signal (70 dBu) to 100% of the Humacao Urbanized Area. In regard to the criteria outlined above, we wish to make several observations regarding the reallocation of Channel 252A to Las Piedras. A Class A FM facility is the minimum FM allotment. The Humacao Urbanized Area encompasses only 22.4 square miles containing 57,144 persons. In view of the limited size of this Humacao Urbanized Area, a Class A FM allotment to any community in that Urbanized Area will invariably provide city-grade coverage to the entire Urbanized Areas. In this situation, such coverage does not support a conclusion that Ventura is merely proposing a reallocation to Las Piedras in order to serve the

⁴The FM allotment priorities are as follows: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

⁵In this connection, we note that in this proceeding, we reallocated Station WVIS, Channel 291B, from Christiansted, Virgin Islands, to Vieques. This will provide service to the entire area and to the population losing service from the reallocation of Station WSAN to Las Piedras.

Humacao Urbanized Area. There is also nothing in the record of this proceeding that would suggest that the Humacao Urbanized Area of 57,144 persons is sufficiently large or dominant enough to preclude a finding that Las Piedras is an independent community entitled to a first local service. In this regard, Las Piedras, with a 1990 population of 2,087 persons, is an independent community within the Las Piedras municipio with its own local government which provides its residents with municipal services, its own businesses, health facilities, churches, transportation systems, telephone book section and zip code. In fact, it is a long distance phone call from Las Piedras to either San Juan or Humacao. Ventura has also submitted letters from the Mayor of Las Piedras, the Mayor of Humacao and the Executive Assistant to the Mayor of San Juan all attesting to the fact that Las Piedras is an independent community without any political, economic, or social attachments to either San Juan or Humacao. In view of the above and the absence of evidence from Radio WKJB to the contrary, we believe that Las Piedras is sufficiently independent from the Humacao Urbanized Area to justify a preference as a first local service to Las Piedras.


10. The fact that Ventura originally asserted that Las Piedras was not located in any Urbanized Area does not warrant reconsideration of the Report and Order. There is nothing in the record of this proceeding to suggest that this was anything more than an oversight which did not affect our ultimate decision to award Las Piedras a preference as a first local service. In this regard, we note that Ventura filed the Las Piedras counterproposal in 1991. At that time, Las Piedras had not been included in any Urbanized Area. As a result of the 1990 United States Census, released in July of 1993, Las Piedras became included within the Humacao Urbanized Area. While Ventura may be faulted for not originally ascertaining this fact, it was subsequently brought to our attention and our resolution of this matter should not be affected by Ventura's oversight. In this connection, we also note that in their respective Petitions for Reconsideration directed to the July 24, 1995 Report and Order in this proceeding, neither Radio WKJB nor Arso Radio challenged any assertion that Las Piedras was not located in any Urbanized Area. It was not until we issued a second Order to Show Cause directed to Radio WKJB and Arso Radio on August 19, 1996, that Radio WKJB and Arso Radio belatedly raised the issue of inclusion of Las Piedras within the Humacao Urbanized Area.

11. Accordingly, IT IS ORDERED, That the aforementioned Application for Review filed by Radio Station WKJB AM-FM, Inc. IS DENIED.

12. IT IS FURTHER ORDERED, That the aforementioned Petition for Reconsideration filed by Radio Station WKJB AM-FM, Inc. IS DISMISSED.

13. IT IS FURTHER ORDERED, That the aforementioned Petition for Reconsideration filed by Arso Radio Corporation IS DISMISSED.

14. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary